

EXHIBIT G

Special Master's Hearing - April 22, 2014

*** Volume III***

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
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5 DANIEL SMALL, CAROLYN SMALL,)
WILLIAM CURTIN, DAVID COHEN,)
6 LANETTE LAWRENCE, and LOUISE)
COLLARD, Individually, and on)
7 Behalf of All Other Persons)
Similarly Situated,) Case No.
8)
Plaintiff,) 2:13-cv-0298-APG-PAL
9)
vs.)
10 UNIVERSITY MEDICAL CENTER OF)
11 SOUTHERN NEVADA,)
12 Defendant.)
_____)

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COPY

13
14 REPORTER'S TRANSCRIPT OF SPECIAL MASTER'S HEARING
15 VOLUME III
16 BEFORE SPECIAL MASTER PRESIDING, DANIEL GARRIE, ESQ.
17 Taken on Tuesday, April 22, 2014
18 At 11:01 a.m.
19 At 333 South Las Vegas Boulevard
20 Courtroom 7C
21 Las Vegas, Nevada
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25 REPORTED BY: Janet C. Trimmer, CRR, CCR No. 864

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1 APPEARANCES:

2
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13 For the Defendant University Medical Center of
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19 Also Present:

20 DOUGLAS FORREST, ESQ.
21 BRUCE PIXLEY
22 DEAN SCHAIBLEY
23 LARRY BARNARD
24 ERNIE McKINLEY
25 JOHN ESPINOZA

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1 gave it to your admin, who then took it to the PBX
2 people, who wiped the phone, who gave it back to you,
3 and you didn't figure out, according to what you just
4 testified, that the phone had been wiped?

5 A. Correct.

6 Q. All right. As far as you knew, it was the
7 exact same phone?

8 A. Correct.

9 Q. Okay. Did you instruct your administrative
10 assistant that the phone was to be preserved?

11 A. No.

12 Q. Did the lawyers tell you that you were under
13 an obligation to preserve your mobile device?

14 A. I believe we had that conversation at some
15 point. I don't recall --

16 Q. That's a yes-or-no question. I don't need a
17 "can't recall." It's either yes or no or don't say
18 anything. And you can talk to your lawyers and then
19 give me an answer, but I don't want any more "I can't
20 remember."

21 A. I'm sorry.

22 MS. FOLEY: Is it fair for him to answer "I
23 think so" because --

24 BY THE SPECIAL MASTER:

25 Q. You can say "I think so," and then you can

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1 talk with your lawyers and give me an answer.

2 A. I think so.

3 Q. Please discuss with counsel so I can get a
4 yes-or-no answer.

5 A. Now?

6 Q. Now.

7 (There was a conference between the
8 witness and counsel.)

9 THE WITNESS: Apparently they -- we had the
10 communication November of 2013 to ensure that nothing
11 got wiped from that phone.

12 BY THE SPECIAL MASTER:

13 Q. Apparently you received a communication in
14 November of 2013 from lawyers saying do not wipe
15 anything; correct?

16 A. I don't -- I do not recall a --

17 THE SPECIAL MASTER: Do you have the e-mail?

18 MS. WITTY: We do. I believe that's on your
19 desk.

20 THE SPECIAL MASTER: I need it.

21 Q. I'm going to make this very simple for you.
22 You are going to submit to me an affidavit. You are
23 going to review every litigation hold notice you
24 received from your lawyers for as long as you have
25 been at UMC as it relates to this litigation, and you

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1 are going to answer the very explicit questions I'm
2 giving you in excruciating detail.

3 But I don't need to see "I do not know,"
4 because I know ones and zeros do not lie. I know that
5 you either got an e-mail or you did not, either you
6 read the e-mail or you did not, either you understood
7 what the e-mail said in English or you did not, either
8 you told somebody to preserve it or you did not.

9 Are we crystal-clear here?

10 A. Yes, sir.

11 Q. Okay. I'm ordering you to go through every
12 single litigation hold notice that you have received
13 from counsel or prior counsel. And then I want you to
14 think really hard about your mobile devices, because
15 ones and zeros do not lie. I don't need you to
16 testify to technical information.

17 What I do need you to testify to is the truth
18 and as to what you remember. If you don't remember
19 receiving an e-mail or telling people that you
20 shouldn't destroy your mobile device, that's fine. If
21 you need to go back and look and refresh your
22 recollection and provide that, but in your affidavit I
23 want the answer.

24 A. Yes, sir.

25 Q. Okay?

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1 regarding preservation. This is not regarding
2 anything but the merits.

3 MR. TOSTRUD: So the interviews have not been
4 produced to Plaintiffs. It's clear --

5 MS. WITTY: They are DOL documents. They are
6 not UMC.

7 MR. TOSTRUD: If I can just get my --

8 THE SPECIAL MASTER: Wait a second. I need
9 to get --

10 Who -- does UMC have a copy of the
11 interviews?

12 THE WITNESS: No.

13 THE SPECIAL MASTER: But did you create the
14 interviews?

15 THE WITNESS: No.

16 BY MR. TOSTRUD:

17 Q. How was UMC aware of the interviews?

18 A. Because Ms. Ybelka -- or Ms. Hernandez
19 indicated that she was interviewing during that period
20 of time. She didn't tell us who she talked to. She
21 didn't tell us anything with regard to her interviews.

22 Q. Are you aware of how she came into possession
23 of your employees' names and contact information?

24 A. She asked earlier for a list of names from
25 that department.

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1 Q. Where can I find that list?

2 THE SPECIAL MASTER: I assume that's been
3 produced?

4 THE WITNESS: I thought it had been. But if
5 not, it could be produced.

6 THE SPECIAL MASTER: Was it withheld, Counsel
7 for UMC, in any --

8 MS. WITTY: It has not been produced at this
9 time.

10 THE SPECIAL MASTER: Would these be employees
11 that she spoke to -- now, I -- again, the merits, I'm
12 not so interested; but would these employees have
13 relevant -- be potential relevant sources of
14 information? No, you wouldn't know.

15 Counsel for -- Ms. Witty?

16 MS. WITTY: From UMC's standpoint, they would
17 not be repositories for UMC knowledge, no.

18 THE SPECIAL MASTER: So you --

19 MR. TOSTRUD: With respect to our case, I
20 just want to clarify that question, because we --

21 MS. WITTY: It would not be binding
22 information. What information they might have through
23 e-mail or other functions, we can discuss, but their
24 testimony would not be UMC's testimony.

25 THE SPECIAL MASTER: You don't have a -- let

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1 MS. WOLKE: Okay.

2 THE SPECIAL MASTER: Well, I'm assuming that
3 you are not going to want everything off the index.
4 So you are going to sample from the index first.

5 MR. TOSTRUD: I see.

6 MS. WOLKE: Okay.

7 THE SPECIAL MASTER: Incorrect terminology.
8 I apologize.

9 They are going to send you a very specific
10 list of documents from the index, in their entirety
11 are to be put into a separate room, for then Counsel
12 for Plaintiffs to go in at their leisure, in a room
13 that is not a sweatshop, that has air conditioning,
14 that doesn't need windows, is accessible from at least
15 9:00 to 5:00 and is made -- and if security or
16 whatever is required, they make it accessible and
17 available.

18 They will go to the office. They will --
19 whatever you guys do with your documents, identify,
20 "This is something we want," this group.

21 You will then -- Counsel for UMC will then
22 take the entire whatever it exists as, following the
23 ESI protocol, produce them all.

24 Do you want them in paper form or would you
25 like them electronically?

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I, the undersigned, an RPR, CRR, and
Certified Shorthand Reporter of the States of Nevada
and California, do hereby certify:

That the foregoing proceedings were taken
before me at the time and place herein set forth; that
a record of the proceedings was made by me using
machine shorthand which was thereafter transcribed
under my direction; that the foregoing transcript is a
true record of the proceedings held.

I further certify I am neither financially
interested in the action nor a relative or employee
of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date
subscribed my name.

Dated: April 29, 2014



JANET C. TRIMMER
CCR NO. 864